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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000404

SIPDIS

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TAGS: [PGOV](#) [UP](#)

SUBJECT: UKRAINE'S DYSFUNCTIONAL CONSTITUTION: REFORM
UNLIKELY THIS YEAR

REF: A. 2008 KYIV 0019

[1](#)B. 2008 KYIV 00873

Classified By: Political Counselor Colin Cleary for reasons 1.4 (b,d).

SUMMARY

[1](#)1. (C) There is at least one thing, despite their many differences, that most Ukrainian politicians can agree on: the current Ukrainian constitution is in need of reform. There is also general agreement that the unclear delineation of powers between the presidency and prime minister/parliament is the constitution's most glaring flaw. Both the Tymoshenko Bloc (BYuT) and the Party of Regions (leading opposition) support a strengthening of the role of parliament vis a vis the presidency. The threshold for a constitutional majority is 300 votes (out of 450) in the Rada. Such a majority would require a political compact between the Tymoshenko bloc and the Party of Regions -- unlikely in this contentious presidential election year. End Summary.

Agreement on Need for Reform

[1](#)2. (SBU) In 2007 President Yushchenko established the now-dormant National Constitution Council to rewrite the constitution. The council held one session in early 2008 but fell apart because the major political parties could not agree on procedure, much less on outcomes. Yushchenko on February 23 publicly renewed his call for a national referendum on amendments to the constitution, stating that the 2004 amendments unbalanced the branches of power. On February 24, Vice Speaker of the Rada Oleksandr Lavrynovych (Party of Regions) told the press that amendments to the constitution were needed to correct mistakes made in 2004. Lavrynovych stated that he would seek to place constitutional reform on the current parliament's agenda.

A House Built on Sand

[1](#)3. (SBU) Stanislav Shevchuk, recently appointed as an ad hoc judge to the European Court of Human Rights and a Constitutional Law Professor in Kyiv, lambasted the 2004 amendments to the Constitution in a recent meeting with us. Referring to the lack of political stability since the 2004 constitutional amendments, he told us it was "impossible to build a house on sand." Shevchuk noted that the 2004 amendments had been the result of a hasty political compromise in the Rada. He argued that the Rada had made changes to the law after it had been reviewed by the Constitutional Court; this, in his judgment, rendered those amendments unconstitutional. Shevchuk underlined the constitution's greatest flaw: lack of clear delineation of powers between the president and prime minister.

Everyone Has a Plan

¶4. (C) The President, the Tymoshenko bloc (BYuT) and Regions have all put forward draft constitutions since early 2008. Vsevolod Rechytskyi, a constitutional law expert, told Emboffs that the Presidential Secretariat had commissioned him to write a draft constitution. The draft favored a strong presidential system, a bicameral legislature and removed all social economic language from the constitution in favor of focusing on fundamental rights and freedoms (Ref A).

¶5. (C) Both BYuT and Regions are working on separate drafts that strengthen the prime minister at the expense of the president. The drafts envision making the presidency a largely symbolic position and moving Ukraine closer to a two-party system (Ref B). However, BYuT and Regions do not agree on key details -- such as which office makes what appointments and whether there should be two rounds for parliamentary elections.

¶6. (SBU) The Chairman of the Parliamentary Committee on National Security and Defense (and former Defense Minister), Anatoliy Hrytsenko in early February submitted a draft constitution to the Rada. His draft, termed a "constitution of order," calls for a strong president to form and lead the government. In order to prevent authoritarianism, the president would serve four years instead of five. Hrytsenko would also simplify impeachment procedures. Volodymyr Horbach, a co-founder of the Civic Constitution Committee, an independent group of NGO's and think-tanks, told Emboffs that

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the draft had little support in the Rada. Horbach saw it as an attempt by Hrytsenko to raise his profile ahead of a possible presidential run.

Amendments Unlikely To Pass Before Presidential Election

¶7. (SBU) Despite recent pronouncements by the President and Vice Speaker in favor of constitutional reform this year, legal experts contend that it would be difficult for any constitutional amendments to pass before the presidential election (expected in January 2010). They cite complex procedures and the need for political consensus among the two largest parties -- BYuT and Regions. According to the constitution, a draft law on introducing amendments may be submitted to the Rada by the President or by 150 deputies (except for amendments to Chapters I - General Principles, Chapter III - Elections, Referendum, and Chapter XIII - Introducing Amendments to the Constitution of Ukraine). Before amendments go to a vote, the Constitutional Court needs to approve them. Amendments become law if in the next session of the Rada 300 of the deputies vote in favor.

¶8. (SBU) If the suggested amendments deal with Chapters I, III or XII, the law can be submitted by the President or by 300 deputies. The amendments still need to be reviewed by the Constitutional court and then pass by 300 votes in the next session. A final wrinkle is that amendments to these chapters also need to be approved in a national referendum. Horbach told Emboffs that the referendum law had not been reviewed since Ukrainian independence. The Rada would need to pass new referendum legislation since the law currently refers to a number of governmental organizations that do not now exist.

Constitutional Majority: 300 votes

¶9. (SBU) The lack of political consensus and the need to reach 300 votes are the current sticking points according to

legal experts. Oleksandr Barabash, a lawyer who has presented cases to the Constitutional Court and is a specialist in election law, told Emboffs that amendments would need a consensus between the Tymoshenko bloc and the Party of Regions. He did not foresee this ahead of the presidential election, saying that there would be little incentive for the parties to make amendments on division of power between the prime minister and president with the presidential election outcome still in doubt.

¶10. (SBU) Leading political analyst and member of the Civic Constitution Committee, Ihor Kohut, echoed Barabash's comments, telling Emboffs that he saw little hope for political compromise between the two leading contenders for president, Tymoshenko and Regions' leader Yanukovych. The Civic Constitution Committee last year authored a "green book" that outlined a process for writing a new constitution that involved establishing a constitutional committee whose members would be both popularly elected and designated by the government. Members would be prohibited from serving in government for five years. Kohut, one of the authors, told us that the green book was a "fantasy" and that the constitution could only be changed by consensus of the political elite.

Comment

¶11. (SBU) Given the difficulty in attaining 226 votes (a bare majority) in the current Rada on controversial measures, the 300 votes needed to form a constitutional majority is a tall order in this contentious presidential election year. Chances for constitutional reform could improve following the (expected) January 2010 presidential election.
TAYLOR